

LICENSE PLATE AUCTION GROUP (LPAG)

Colorado Department of Revenue
1881 Pierce St., Lakewood Colorado
August 19, 2014

Minutes to the Meeting

Members in Attendance: Maren Rubino, Rich Medina, Mark Simon, Bob Gall, Zach Pierce, Gina Robinson, Ryan Carson, (all via telephone).

Guests in Attendance: Chris Hochmuth – DOR, Dylan Ikenouye DOR, LeeAnn Morrill – AG’s Office, Marty Zimmerman – Zimm Consulting (all via telephone).

CONVENE:

- Meeting was called to order at 2:05 pm by Rich Medina.

Agenda:

Rich noted the only item on the agenda, really was the Terms and Conditions and the Certificate. He asked LeeAnn if she wanted to step the Group through and deal with questions.

LeeAnn noted that as she was physically moving into her new home, as we speak, she didn’t have the Terms and Conditions in front of her and did not have access to a computer. So she suggested that if someone else could walk through them, she could answer questions about them as they went along.

[Marty and Maren both took extensive notes about the changes that would be decided today and incorporated into the Terms and Conditions. If these minutes vary, Maren’s notes should prevail.]

Mark started with a question about item 4, where it talked about gifting the configuration, he questioned whether person was just a person or if that also covered other organizations/entities. LeeAnn said it could be changed to Person or Entity and then refer to them as the “gift recipient” throughout. The same would be true for the last sentence of number 5 (a conforming change).

Maren had a proposed change for item numbers 6, 7 & 8. To add to the end of each of those statements, “or until the registration of the vehicle to which the registration number is registered (if any) has expired pursuant to C.R.S. § 42-3-114, 42-3-211(4) and (6)(d).” This would be to reference the appropriate Personalized Plate Statutes that would then come into play, once a winner decides to register a plate. It also brings into play what happens if this particular vehicle registration expires, and stays expired for 13 months. If it does then LPAG gets the right to re-use the number.

LeeAnn asked if each of those statutes referenced the 13 month period, and Maren responded that this addition was at the suggestion of DOR's counsel at the AG's office, and that the 13 month periods were DOR's policy and not statute. Maren read them out for LeeAnn (and other's) benefit.

Mark asked if there was a need for a citation of the Rule for the 13 month expiration. LeeAnn didn't think so. Maren had no problem adding the "expired at least 13 months", but there was no specific statute that said that and LeeAnn pointed out that currently, there was no Rule currently in effect to reference the 13 months.

Mark asked if was no prohibition from someone coming in and re-registering a number that had been expired more than 13 months, in the current Rule (awaiting promulgation). Maren said that instructions have been given to the Counties, a month ago, that if anyone had a personalized plate, expired more than 13 months that it could not be reregistered, in anticipation of the proposed Rule.

LeeAnn asked if personalized plates and therefore Auction Winners could transfer these plates to other vehicles, should the owner decide to sell. Maren said yes, as long as they did transferred it from one to another right away. If they took it off of one car, but didn't put it onto another car within 13 months, they would lose the right to use it.

LeeAnn had concerns here because she could see where a winner would think they had won the right to use the configuration/plate for the next 50 years (for example) and run into a problem if they put it on a car and then went to transfer it but didn't do it in a timely fashion and end up losing the plate back to LPAG before the 50 years was up. LeeAnn believed the Group needed to look at this for the future as this might be a problem. For this Auction and the limited number of plates, she didn't want to get mired down in a policy discussion about this now. LeeAnn wanted to have a discussion about this with Laurie Rottersman (DOR Ag's counsel) as when situations like this come up, usually the more specific statute controls. This seems like an unlikely situation, immediately, but the Group does need to be aware of this for the future. Mark agreed this raised an important point.

Bob asked what happens if (for example) he were 80 years old, bought a configuration for \$100,000, then shortly thereafter, loses the ability to drive (has his car/license taken away from him due to his age/health) with no heirs, does he lose out? LeeAnn thought this was a good question. Maren said or you could sell it back to LPAG. Mark thought this would become an ADA violation. Bob said it needed to be fixed. Everyone agreed it was an issue to be looked at for the future and not today.

Mark asked if 6, 7, & 8 shouldn't contain wording to the effect, "subject to all other terms and conditions contained herein..." as 10, 11, 12 talked about reasons you could lose a plate. LeeAnn agreed and pointed out that the first item in Terms and Conditions already says, "...by bidding...you are agreeing to all of these Terms and Conditions." Also, the certificate of ownership is subject to all the Terms and Conditions and applicable laws, that there was enough board applicability that it probably did not need to be there. Mark said he was just asking.

Bob asked about leaving the configuration to a Charity. He suggested that a 10 (v.) could be added indicating a gift to a charitable organization. Mark had no objection. Zach thought this might be an ongoing question for the future and not necessary to decide for this auction. LeeAnn agreed.

Mark asked LeeAnn to look at 4 and 5 for the future regarding ability of the winner to gift the configuration in the same light as Bob's statements above. LeeAnn thought that a conforming change should be made to the Certificate to include person/entity as above in Marks first comment.

Mark asked about number 9, regarding the 7 days to pay. He asked about what happens if the winner doesn't pay, can they approach the 2nd place winner; and can they sue the original winner to recover the difference between the first place winner and the 2nd place winner. (Marks questions were addressed to the Group as a whole.) LeeAnn thought that by bidding, the bidder was accepting the Terms and Conditions, therefore entering a legally binding contract. She also thought that, yes LPAG could go and sue for the difference, but would it be a good use of the Groups resources, given the amount of money involved. LeeAnn thought it might be a good idea to approach the 2nd place winner and was easy enough to insert something to that effect, as it stands now, if the winner doesn't pay, the configuration goes back to LPAG to be re-auctioned. She also noted that if the 2nd place winner were approached, they would not be obligated, as they hadn't been the winning bidder, but that it did make sense to approach them. Mark further asked if the right to sue for not paying needed to be added, LeeAnn indicated it was inherent since the Terms and Conditions would have become a contract and either party can sue for non-performance under the terms of the contract.

Bob said LPAG should offer the configuration to the next highest bidder, should the original winner not pay. Marty said that he was able to make that happen as part of the follow-up.

Rich brought up a scenario where the winning bid was \$100,000 and didn't pay, and the next highest bid was \$14; consequently, could the Group put something in place to be sure they didn't get screwed out of thousands of dollars. LeeAnn agreed and said that when they draft that language they should absolutely use the word "may" (i.e. In the event that the winning bidder does not pay the bid amount within 7 calendar days, the LPAG may offer it to the next highest bidder or retain the configuration for future auctions, at their discretion.)

The exact wording worked out for #9 was "Notwithstanding the provisions of Numbers 3, 4, and 5 above, if you are the winning bidder for a registration number and you fail to make payment in full of the winning bid amount to the Group within 7 calendar days of the closing date of the auction, then your winning bid shall be cancelled reverts back to **the Group who may offer the registration number to the next highest bidder or be placed back into** reserve status for future auction by the Group."

For number 10 Mark asked if there were no heirs, if the Terms and Conditions needed to spell out that the configuration would then revert back to LPAG. LeeAnn thought that the Terms and Conditions and a whole made that clear, but perhaps the heir needed to notify LPAG of the change.

Marty suggested adding at the end of the Terms and Conditions: "Notice of transfer of rights must be made in writing to the License Plate Auction Group within 30 days after final adjudication of the Last Will and Testament."

There was then a long general discussion about will, estates and inheritances. LeeAnn then offered, "...The winning bidder's Executor must notify the Group in writing within 60 days of the final adjudication of the estate containing a bequest of the registration number." Maren pointed out that if

the configuration is put on a plate and registered, then the Personalized Plate statutes kick in and they are not currently inheritable.

Marty suggested that this could be handled the way that Credit Card Terms and Conditions are handled, with a statement saying that the Terms and Conditions might change. LeeAnn saw where Marty was going, but that situation is completely different and so that kind of language can't apply.

LeeAnn suggested that the Group think about whether or not this provision is a good idea at this time. That for now, they not be transferrable (inheritable) until they can do a little more research and come back with a better thought out plan. Additionally the 6, 7 & 8 be modified to say something like, "the winning bidder shall have the right to use the plate for (X) years or the duration of their life whichever is shorter", for this auction.

Rich noted at this point, the Group was 5 minutes over their allotted time and wanted to check and see where everyone was at. It was agreed to extend the call until 3:30.

Marty suggested moving on and coming back to this at the end and make a decision.

For number 11 Mark asked if this was to cover a situation where someone turned in a valuable plate for auction or if this was the situation where previous winner turned the plate in to auction, on consignment, as it were for the 75/25 split situation. LeeAnn replied that she believed this was the latter. Mark wanted to change "relinquish" to "consign" in number 12. LeeAnn pointed out the difference between the two terms as one implied a complete giving up, and the other was more of a "if it doesn't sell (for enough?) then I get it back" sort of situation. She then noted that the Group should make a decision about which they wanted to do. Marty thought it was pretty 11 and 12 were pretty clear as they were. Marty suggested adding "...recipient shall have the right to relinquish the registration number to the Group for inclusion in a future auction by notifying the Group in writing, **for that purpose.**"

Additionally for number 12, Maren then wanted to add, "...In such event, the winning bidder or gift recipient shall receive, **from the Group, 75% of the winning bid amount from the future auction after the new winning bidder makes payment in full of the winning bid amount to the Group.**"

Mark asked if there needed to be something added to the effect that if a winner opted to put his/her configuration on a plate, had paid all the fees, but had failed to go to the County, finalize the registration and pick up the plates, they reverted back to LPAG. Maren and LeeAnn discussed how this was already a DMV procedure and that it had been in an earlier draft, and perhaps this needed to be spelled out further. Maren clarified that when the customer signs the DR2810 Personalized Plate application that it notifies them they have 13 months from date of manufacture to get it registered. Mark still wanted it spelled out.

LeeAnn had Marty quote a draft she had sent that had her original language surrounding this, "If a winning bidder or gift recipient fails to take possession of the personalized license plate within thirteen months, of the license plate **being shipped to the County Motor Vehicle office**, the license plate will be returned to the Department and will be rendered unusable. Registration number will revert to reserved status for future auction by the Group." [This would become the new number 19 and all

other item numbers adjusted accordingly.] Maren confirmed that this is the current policy for personalized plates that are not picked up.

Marty noted that the time was 3:30 and they would need to take a vote on the Terms and Conditions as they were or risk losing their quorum and not having this in place for the auction starting day after tomorrow (8/21/2014).

Marty directed the Group's attention back to number 10. LeeAnn asked if they wanted to work through it now or cut it for now. Marty suggested leaving it as it is now for this test auction, and then re-visiting it for future auctions. Mark noted that these aren't the huge dollar amount plates, so LPAG's risk was fairly low, at this point. There seemed to be general agreement on this point.

Mark moved to adopt the Terms and Conditions and Certificate as discussed and with the edits discussed in the meeting. Bob 2nd.

- Rich – Yes
- Bob – Yes
- Zach – Yes
- Mark – Yes
- Ryan – Yes
- Maren – Yes
- Gina – Yes
- Motion Passed.

Marty said that on Thursday morning (8/21-2014) LPAG would be featured on *Day Break Colorado* (TV magazine on channel 2) and were looking for 1-2 people to be on it. Marty would be there, TH couldn't make it and was looking for a volunteer to do it. LeeAnn admonished that whoever it was should be careful about what they said about tax representations and where the money was going, etc. Peter Pike was nominated; Rich thought he might be able to be a backup.

Marty and Maren will confirm the changes in the documents, LeeAnn as well, when she can get to a computer; once finalized they will be sent to HandBid for the auction.

Mark wanted to make sure that there were two items for a future agenda, Item number 10 and a second one that no one could remember, and would ask Maren (who had already dropped off of the call).

The meeting adjourned at 2:41 p.m.

The next regular meeting of LPAG will be August 25th in the Boards and Commissions Conference room at 1881 Pierce Street.

Respectfully submitted
Chris Hochmuth
Administrative Services Supervisor
Title and Registration Sections

